



24 CFR Parts 28, 30, 87, 180, and 3282

[Docket No. FR-6346-N-01]

Adjustment of Civil Monetary Penalty Amounts: Request for Comments

AGENCY: Office of the General Counsel, HUD.

ACTION: Request for comments.

SUMMARY: Consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“2015 Act”), HUD annually publishes a final rule adjusting its civil money penalty amounts for inflation according to the formula provided by the 2015 Act. In these rules, HUD does not apply the adjustments retroactively and provides that the inflation-adjusted penalty amounts apply to violations occurring on or after the rule’s effective date. HUD is considering revising this approach, however, and annually applying inflation-adjusted penalty amounts to violations assessed after the date of inflation, if the violation occurred after the enactment of the 2015 Act. Through this request for comments, HUD seeks public input on the impact of applying inflation-adjusted penalty amounts on the date the penalty is assessed rather than the date of the violation.

DATES: Comments are due on or before: **INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**

ADDRESSES: Interested persons are invited to submit comments regarding this request. All submissions must refer to the above docket number and title. There are two methods for submitting public comments:

1. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <https://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the author maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments

submitted electronically through the <https://www.regulations.gov> website can be viewed by other submitters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

2. Submission of Comments by Mail. Members of the public may submit comments by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at all federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments received by mail available to the public at <https://www.regulations.gov>.

No Facsimile Comments. Facsimile (FAX) comments will not be accepted.

Public Inspection of Public Comments. All properly submitted comments and communications regarding this document submitted to HUD are available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number).). Hearing- or speech-impaired individuals can dial 7-1-1 to access the Telecommunications Relay Service (TRS), which permits users to make text-based calls, including Text Telephone (TTY) and Speech to Speech (STS) calls. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20024; telephone number 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals

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SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Pub. L. 114–74, sec. 701, 129 Stat. 599), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Specifically, the 2015 Act, codified at 28 U.S.C. 2461, note, requires agencies with statutory authority to assess civil money penalties (CMPs) and publish annual adjustments for inflation. Section 5 of the 2015 Act establishes the formula for calculating annual adjustments and is tied to the Consumer Price Index for all Urban Consumers (CPI-U). In accordance with the 2015 Act, annual adjustments after the initial “catch-up” adjustment may be issued “notwithstanding section 553 of Title 5, United States Code”, the notice and comment requirements of the Administrative Procedure Act.

On June 15, 2016, HUD issued for public comment an interim rule, pursuant to the 2015 Act, to amend CMP regulations (81 FR 38931). HUD finalized the interim rule the following year in the Inflation Catch-up Adjustment of Civil Monetary Penalty Amounts Final Rule and Adjustment of Civil Monetary Penalty Amounts for 2017 (82 FR 24521). HUD’s 2017 final rule stated that “Since HUD is not applying these adjustments retroactively, the 2016 increases being finalized apply to violations occurring prior to the effective date of this final rule (and on and after the effective date of the 2016 interim rule) and the 2017 increases apply to violations occurring on or after this rule’s effective date.”

Since the publication of the 2017 final rule, HUD has continued to apply inflation-adjusted penalty amounts to violations occurring on or after the rule’s effective date each year.¹

¹ See Adjustment of Civil Monetary Penalty Amounts for 2018-2022 at 83 FR 32790; 84 FR 9451; 85 FR 13041; 86 FR 14370; and 87 FR 24418.

In addition, HUD has implemented its adjusted penalty amounts uniformly across the several programs for which it has authority to assess penalties.

HUD Statutory and Regulatory Authority for Imposition of Civil Money Penalties		
Description	Statutory Citation	Regulatory Citation (24 CFR)
False Claims	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(1))	§ 28.10(a)
False Statements	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802 (a)(2))	§ 28.10(b)
Advance Disclosure of Funding	Department of Housing and Urban Development Act (42 U.S.C. 3537a(c))	§ 30.20
Disclosure of Subsidy Layering	Department of Housing and Urban Development Act (42 U.S.C. 3545(f))	§ 30.25
FHA Mortgagees and Lenders Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-14(a)(2))	§ 30.35
Other FHA Participants Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-14(a)(2))	§ 30.36
Indian Home Loan Guarantee Lender or Holder Violations	Housing Community Development Act of 1992 (12 U.S.C. 1715z-13a(g)(2))	§ 30.40
Multifamily & Section 202 or 811 Owners Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-15(c)(2))	§ 30.45
Ginnie Mae Issuers & Custodians Violations	HUD Reform Act of 1989 (12 U.S.C. 1723i(a))	§ 30.50
Title I Broker & Dealers Violations	HUD Reform Act of 1989 (12 U.S.C. 1703)	§ 30.60
Lead Disclosure Violation	Title X—Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d(b)(1))	§ 30.65

Section 8 Owners Violations	Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437z-1(b)(2))	§ 30.68
Lobbying Violation	The Lobbying Disclosure Act of 1995 (31 U.S.C. 1352)	§ 87.400
Fair Housing Act Civil Penalties	Fair Housing Act (42 U.S.C. 3612(g)(3))	§180.671(a)
Manufactured Housing Regulations Violation	Housing Community Development Act of 1974 (42 U.S.C. 5410)	§ 3282.10

II. This Document

This document announces that HUD is considering revising its implementation of the 2015 Act by providing that the adjusted penalty amounts would apply to penalties assessed after the publication of the adjustment, rather than to violations occurring after publication of the adjustment, as long as the violation occurred after the enactment of the 2015 Act. HUD is considering applying the inflation-adjusted penalty amounts in this manner after revisiting Section 6 of the 2015 Act which provides that an “increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predate such increase, which are assessed after the date the increase takes effect.” 28 U.S.C. 2461, note. The Office of Management and Budget (“OMB”) guidance (M-22-07) which provides the 2022 inflation multiplier also provides that the adjusted penalty applies to “penalties assessed after the effective date of the applicable adjustment”.² Finally, a review of the penalty adjustments published by other federal agencies suggests that they apply the inflation-adjusted penalty amounts to penalties assessed after the date of the increase as long as the violation occurred after the enactment of the 2015 Act.

² December 15, 2021, Memorandum for the Heads of Executive Departments and Agencies (M-22-07) from Shalanda D. Young, Acting Director, Office of Management and Budget, Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (OMB Memorandum), at 4.

III. Request for Public Comments

In considering the forthcoming 2023 fiscal year, HUD is considering whether to revise its implementation of the 2015 Act to apply inflation-adjusted penalty amounts on the date the penalty is assessed, rather than the earlier date of the violation, and is requesting public comment. HUD is interested in the impact of such a change, as well as the impact of applying the inflation-adjusted penalty to the date of assessment for some, but not all, programs.

Damon Smith,
General Counsel

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